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In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 325

INGER JULIANE HANSEN, PETITIONER

v.

EDWARD L. HAFF, ACTING COMMISSIONER OF IMMIGRATION for the Port of San Francisco

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

No opinion was rendered by the District Court (R. 20). The majority (R. 37), and dissenting (R. 40) opinions in the Circuit Court of Appeals are reported in 65 F. (2d) 94.

JURISDICTION

The judgment to be reviewed was entered on May 8, 1933 (R. 45). Certiorari was granted by this Court on October 9, 1933 (R. 49). Jurisdiction of this Court is conferred by Section 240 (a) of the

Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Petitioner states that there are two questions presented. We think there is only one and that it should be stated as follows:

Where the evidence before the Secretary of Labor shows that a resident alien woman has been engaged in repeated acts of illicit sexual intercourse with a certain man over a long period of time; that thereafter she accompanied him abroad, that she maintained her illicit relations with him on this trip, that for at least a part of the trip they traveled together as man and wife, and that when taken into custody on the day of her return to this country she was found occupying the same room with this man at a hotel where they were registered as man and wife, may the alien be deported as having entered the United States for an immoral purpose within the meaning of the immigration laws?

STATUTES INVOLVED

Section 3 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874 (U.S.C., Title 8, Sec. 136), so far as pertinent, reads as follows:

> That the following classes of aliens shall be excluded from admission into the United States: * * * prostitutes, or persons coming into the United States for the purpose of prostitution or for any other immoral purpose; * * *.

Section 19 of that Act (U.S.C., Title 8, Sec. 155) reads in part as follows:

> That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported: * * *.

Section 23 of the Act of May 26, 1924, c. 190, 43 Stat. 165 (U.S.C., Title 8, Sec. 221), reads in part as follows:

> Whenever any alien attempts to enter the United States the burden of proof shall be upon such alien to establish that he is not subject to exclusion under any provision of the immigration laws; and in any deportation proceeding against any alien the burden of proof shall be upon such alien to show that he entered the United States lawfully, and the time, place, and manner of such entry into the United States, but in presenting such proof he shall be entitled to the production of his immigration visa, if any, or of other documents concerning such entry, in the custody of the Department of Labor.

STATEMENT

Petitioner, an alien, was ordered deported, after a hearing, on the ground "that she entered the United States * * * for an immoral purpose" (Exhibit A, p. 55, on file with this Court).

The immigration file contains evidence (Exhibit A, pp. 3–11, 26–33) which shows that petitioner

originally arrived in this country from Denmark in 1922. From that time until May 1931, with the exception of several trips abroad, she worked as a domestic servant and cook. In May 1931, accompanied by one Bolinger, a married man and an American citizen, she left Los Angeles for Europe. For approximately six years prior thereto Bolinger and the petitioner had engaged in repeated acts of sexual intercourse but did not live together. The greater part of the expenses of the trip to Europe were paid by Bolinger. On this trip the two continued their illicit relations, and during a part of the trip, at least, they traveled together as man and wife, petitioner being known as Mrs. Bolinger. They returned to this country on September 6, 1931, reentering at Seattle. Petitioner was admitted as a returning resident. On the night of her arrival petitioner was taken into custody by the immigration authorities. At that time she was occupying a room with Bolinger in a Seattle hotel in which the two were registered as man and wife. At a preliminary hearing before the immigration authorities the petitioner admitted the previous illicit relations with Bolinger in Los Angeles and on the trip to Europe and said that she intended to continue such relations with him until they reached Los Angeles but that thereafter she did not intend to see him. "I might see him, but that is all." Bolinger also admitted their illicit relationship on the European trip (Ex. A, p. 12). At a subsequent

hearing petitioner denied some of her prior admissions.

Petitioner's parents live in Denmark, and she not only has no relatives in this country, but she had established no home here, it being her habit to make her home at whatever place she was employed as a domestic (Ex. A, pp. 29, 30). Moreover, she had no employment awaiting her return here (pp. 4, 5, 30).

To test the legality of the order of deportation petitioner filed in the United States District Court for the Northern District of California a petition for a writ of habeas corpus in which she contended, principally, that she should not be deported because "any intention she may have had to enter the United States [upon her return] for the purpose of having adulterous relations with a person of the United States was wholly incidental and immaterial to her purpose in returning to the United States to resume her residence therein and to resume her occupation as a domestic therein" (R. 1–8). An order to show cause was issued (R. 9), but, after a hearing (R. 19), the petition was denied (R. 20). Upon an appeal to the Circuit Court of Appeals for the Ninth Circuit, the judgment of the District Court was affirmed, one judge dissenting (R. 37–45).

ARGUMENT

1. Petitioner contends that her illicit sexual relationship here involved does not constitute actual concubinage, and, therefore, she is not excludable

as having entered for an "immoral purpose" within the meaning of the applicable immigration provisions, *supra*. She appears to rely upon the decision of this Court in *United States* v. *Bitty*, 208 U.S. 393, to support her contention.

We think that there was evidence warranting the Secretary of Labor in finding that she was a concubine, and therefore it is not open to establish that his decision is wrong, by merely attempting to weigh that evidence. As said in *Vajtauer* v. *Commissioner*, 273 U.S. 103, 106:

> Deportation without a fair hearing or on charges unsupported by any evidence is a denial of due process which may be corrected on *habeas corpus*. Cf. *Chin Yow* v. *United States*, 208 U.S. 8; *Kwock Jan Fat* v. *White*, 253 U.S. 454. But a want of due process is not established by showing merely that the decision is erroneous, *Chin Yow* v. *United States, supra*, 13, or that incompetent evidence was received and considered. See *Tisi* v. *Tod*, 264 U.S. 131, 133. Upon a collateral review in *habeas corpus* proceedings, it is sufficient that there was some evidence from which the conclusion of the administrative tribunal could be deduced and that it committed no error so flagrant as to convince a court of the essential unfairness of the trial. *Tisi* v. *Tod, supra*.

The evidence discloses that petitioner went abroad in the company of her paramour, lived

there much of the time as his wife, and apparently returned in that status, for immediately upon entering this country on their return trip, they registered and remained at a hotel in such relationship. It was at the hotel she was apprehended by the immigration authorities. Such evidence establishes concubinage. (R. 16–17.) *United States* v. *Bitty*, 208 U.S. 393, 400–401, *supra*, and *State* v. *Feasel*, 74 Mo. 524. It is true she protested that she did not intend to continue such relations after her return to California, but the Secretary was not bound to accept her statements to that effect. *Tang Tun* v. *Edsell*, 223 U.S. 673, 681; *Bauder* v. *Uhl*, 211 Fed. 628, 633 (C.C.A. 2d). As she had neither home nor place of employment here upon her return, the Secretary was warranted in assuming that her admitted illicit relationship would continue. *Vajtauer* v. *Commissioner*, 273 U.S. 103, 111, *supra*. She was clearly a concubine on her outward and inward trip, and the Secretary was warranted in concluding that such continued cohabiting was their purpose upon their return here.

In order, however, to sustain the judgment below, it is unnecessary to demonstrate that petitioner's illicit sexual relations constituted her a technical concubine. Nor does the rule *ejusdem generis* require that the words "any other immoral purpose" in the statute (*supra*, p. 2) be limited to concubinage. Indeed, the underlying principle of

United States v. *Bitty*, 208 U.S. 393, 402–403, *supra*, is to the contrary. In that case it was said:

> It may be admitted that in accordance with the familiar rule of *ejusdem generis*, the immoral purpose referred to by the words "any other immoral purpose," must be one of the same general class or kind as the particular purpose of "prostitution" specified in the same clause of the statute. 2 Lewis' Sunderland Stat. Const., § 423, and authorities cited. But that rule cannot avail the accused in this case; for, the immoral purpose charged in the indictment is of the same general class or kind as the one that controls in the importation of an alien woman for the purpose strictly of prostitution. The prostitute may, in the popular sense, be more degraded in character than the concubine, but the latter none the less must be held to lead an immoral life, if any regard whatever be had to the views that are almost universally held in this country as to the relations which may rightfully, from the standpoint of morality, exist between man and woman in the matter of sexual intercourse. We must assume that in using the words "or for any other immoral purpose," Congress had reference to the views commonly entertained among the people of the United States as to what is moral or immoral in the relations between man and woman in the matter of such intercourse. Those views may not be overlooked in determining questions involving the mor-

> ality or immorality of sexual intercourse between particular persons. * * *

It is thus made clear that the statute was aimed at all forms of sexual immorality which are condemned by "the views that are almost universally held in this country as to the relations which may rightfully, from the standpoint of morality, exist between man and woman in the matter of sexual intercourse." It would require blind adherance to technicality to hold that carrying on illicit sexual intercourse with a man while living in his home was within the reach of the statute but that the same continuous intercourse carried on with the same man elsewhere, as in the case at bar, fell outside the statute.

The question has been further set at rest by the rulings under the so-called White Slave Statute, which also contains the words "any other immoral purpose" (c. 395, 36 Stat. 825).

In *Hays* v. *United States*, 231 Fed. 106 (C.C.A. 8th), affirmed, 242 U.S. 470, Hays was convicted under two counts of an indictment which charged him with being concerned with the transportation of a young woman for the purpose of having illicit sexual relations with her. The conviction was upheld, and on appeal the judgment was affirmed by this Court. 242 U.S. 470, 486.

In *Johnson* v. *United States*, 215 Fed. 679 (C.C.A. 7th), conviction was upheld under an

indictment which charged transportation of a woman for the purpose of having sexual intercourse with her. In meeting the contention that the statute did not apply, the court said (p. 683):

> * * * So it becomes apparent that "commercialized vice" or "the traffic in women for gain" is not the common ground, that the nexus indicative of the genus is sexual immorality, and that fornication and adultery are species of that genus. This conclusion is fortified by *United States* v. *Bitty*, 208 U.S. 393, 28 Sup.Ct. 396, 52 L.Ed. 543, where in construing the prohibition of the immigration act against the importation of alien women "for the purpose of prostitution or any other immoral purpose," the latter phrase was held to mean unlawful sexual intercourse regardless of financial considerations. See, also, *United States* v. *Flaspoller* (D.C.) 205 Fed. 1006, in reference to the White Slave Traffic Act.

To the same effect are—

Huffman v. *United States*, 259 Fed. 35, 39 (C.C.A. 8th).

Carey v. *United States*, 265 Fed. 515 (C.C.A. 8th).

Bonness v. *United States*, 20 F. (2d) 754 (C.C.A. 9th).

Blain v. *United States*, 22 F. (2d) 393 (C.C.A. 8th).

Hart v. *United States*, 11 F. (2d) 499 (C.C.A. 9th), certiorari denied, 273 U.S. 694.

Aplin v. *United States*, 41 F. (2d) 495 (C.C.A. 9th).

Coltabellotta v. *United States*, 45 F. (2d) 117 (C.C.A. 2d).

Suslak v. *United States*, 213 Fed. 913, 917 (C.C.A. 9th).

There appears to be no escape from the conclusion that petitioner's immorality is of the type covered by the statute, and she is unable to cite any decision holding otherwise.

2. The remaining angle of the question requiring consideration is whether, under the facts, the Secretary was warranted in finding that petitioner entered the country for an immoral purpose. It is her contention that she had previously lived here, went abroad on a visit, and was merely returning to her home here, so that while she had engaged both abroad and here in immoral practices, it could not be established nor assumed that such practices constituted the purpose of her return trip. Here again we must apply the rule that if there be any evidence from which the Secretary could draw the inference that petitioner's purpose in entering the United States was an immoral one, no judicial relief can be granted her. Petitioner argues that because she had previously lived in the United States, her return here was the mere consequence of an intended temporary visit abroad. Over against such claims must be placed the fact that she went abroad for an immoral purpose, she had neither a home nor a job awaiting her upon her return here, she has no relatives in this country, but has parents residing abroad, and further that her illicit relations

carried on abroad were continued up to the time of her arrest after she had entered upon her return trip. Under these circumstances it would be futile to speculate as to whether she would have returned here if her paramour had entirely severed relations with her while abroad. Having gone abroad for an immoral purpose, as the evidence clearly establishes, the Secretary's conclusion from the whole evidence that she returned for that purpose, at least in part, cannot be said to be either arbitrary or utterly lacking in supporting evidence. *Sibray* v. *Kupples,* 185 Fed. 401, 402 (C.C.A. 3d). The immoral purpose need not be the sole purpose of her reentry. Thus in *Aplin* v. *United States,* 41 F. (2d) 495, 496 (C.C.A. 9th), it was said:

> Finally, it is contended that there was a failure to prove that the transportation was for an immoral purpose. Purpose or intent is generally proved by circumstantial evidence, and may be so proved under all the authorities. Here there were illicit relations in Oregon before their departure from that state, there were illicit relations in the course of the trip, and illicit relations after its termination. From these facts and circumstances, the jury might well infer that at least one purpose of the transportation was debauchery, or other immoral purpose. *Tobias* v. *United States* (C.C.A.) 2 F. (2d) 361; *Noland* v. *United States* (C.C.A.) 10 F. (2d) 768; *Hart* v. *United States* (C.C.A.) 11 F. (2d) 499; *Ghadiali* v. *United States* (C.C.A.) 17 F. (2d) 236.

In *Ghadiali* v. *United States,* 17 F. (2d) 236, 237 (C.C.A. 9th), certiorari denied, 274 U.S. 747, it was said:

> * * * He had a right to cause her to be transported in interstate commerce in the discharge of her secretarial duties without transgressing the provisions of the law; but if, in addition to the secretarial duties, it was also his purpose to have sexual intercourse with her, and, entertaining such purpose, transported her in interstate commerce, he would be guilty. It was lawful to transport her in interstate commerce as his secretary, but unlawful to have her as his mistress as well. *VanPelt* v. *U. S.* (C.C.A.) 240 F. 346, L. R. A. 1917E, 1135; *Sloan* v. *United States* (C.C.A.) 287 F. 91.

See also—

> *Carey* v. *United States,* 265 Fed. 515, 517, 518 (C.C.A. 8th).

As said in *Vajtauer* v. *Commissioner of Immigration,* 273 U.S. 103, 106, we think "there was some evidence from which the conclusion of the administrative tribunal could be deduced" that at least one of the purposes of petitioner's return to this country was the immoral one as charged in the warrant of deportation.

The cases upon which petitioner relies do not, when properly analyzed, compel a different conclusion.

CONCLUSION

It is respectfully submitted that the judgment below should be affirmed.

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